

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
112703-017

In Re Application Of: **Patel et al.**

Serial No.
09/648,033

Filing Date
August 25, 2000

Examiner
A. Corbin

Group Art Unit
1761

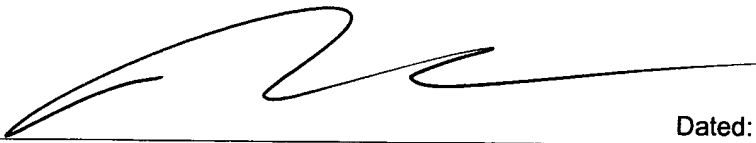
Invention: **ENVIRONMENTALLY FRIENDLY CHEWING GUMS INCLUDING LECITHIN**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on July 28, 2003

The fee for filing this Appeal Brief is: **\$320.00**

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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Signature

Dated: **September 29, 2003**

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I certify that this document and fee is being deposited on **09-29-2003** with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


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CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Patel et al.
Appl. No.: 09/648,033
Conf. No.: 5292
Filed: August 25, 2000
Title: ENVIRONMENTALLY FRIENDLY CHEWING GUMS INCLUDING
LECITHIN
Art Unit: 1761
Examiner: A. Corbin
Docket No.: 112703-017

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Dear Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on July 28, 2003. This Appeal is taken from the Final Rejection dated April 29, 2003.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on appeal is Wm. Wrigley Jr. Company by virtue of an Assignment dated November 13, 2000 and recorded in the United States Patent and Trademark Office.

II. RELATED APPEALS AND INTERFERENCES

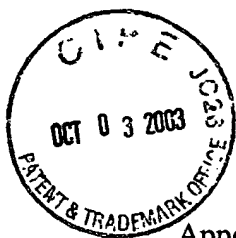
Appellants do not believe there are any known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision with respect to the above-identified Appeal.

III. STATUS OF THE CLAIMS

Claims 1-20 are pending in this Application. A copy of appealed Claims 1-20 is attached hereto as the Appendix. In the Final Office Action dated April 29, 2003, Claims 1-6 and 8-20

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are rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,518,615 ("*Cherukuri I*"), U.S. Patent No. 4,794,003 ("*Cherukuri II*") or U.S. Patent No. 4,452,820 ("*D'Amelia*"); and Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cherukuri I*, *Cherukuri II* or *D'Amelia* in view of U.S. Patent No. 4,246,286 ("*Klose*"). A copy of the Final Office Action and the cited art are located in the Supplemental Appendix as Exhibits A-E.

IV. STATUS OF THE AMENDMENTS

No amendments after final were filed.

V. SUMMARY OF THE INVENTION

The summary of the invention on Appeal is provided as follows:

The present invention relates generally to chewing gums. More specifically, the present invention relates to chewing gum compositions, and methods for making same, that result in gum cuds having reduced adhesion when compared to typical chewing gum compositions. (Specification, page 1, lines 7-10)

Chewing gum-like substances have been enjoyed for hundreds of years. In the nineteenth century, the predecessor to today's chewing gum compositions were developed. Today, chewing gum is enjoyed daily by millions of people world wide.

When chewing gum is chewed, a water insoluble gum cud remains. Typically, gum cuds are mainly composed of a water insoluble portion that is represented by the gum base. The gum cud is usually disposed of in the wrapper that initially houses the chewing gum. Of course, the gum cud can be disposed of in other substrates by wrapping the substrate around the gum cud. There are a variety of other ways and methods for disposing gum cuds.

Although gum cuds can be easily disposed of without creating any problems, gum cuds, when improperly disposed of, can create environmental issues. In this regard, the improper disposal of chewing gum, e.g. expectorating the chewing gum on a sidewalk, floor, or like area, can create a nuisance. Due to their typical formulation, gum cuds have an adhesive-like characteristic. Therefore, the chewed gum cuds can stick to environmental surfaces onto which they are intentionally or unintentionally placed. This can create issues if the gum cuds are

improperly discarded. Such environmental surfaces can include concrete, flooring materials, walls, fabric, carpeting, metal, wood, plastic, glass, and other surfaces.

Appellants have discovered how to produce chewing gums that if improperly disposed of have reduced adhesion to environmental surfaces such as wood, concrete, fabric, carpet, metal and other such surfaces.

In this regard, Appellants have found that chewing gums that include high levels of lecithin and that do not include filler in the gum base result in gum cuds that display such reduced adhesion properties. These fillers are inert organic powders such as calcium carbonate, magnesium carbonate, ground limestone, and silica type compounds such as magnesium and aluminum silicate, clay, alumina, talc, titanium dioxide, calcium phosphate and combinations thereof. The fillers can be removed from typical gum base formulations and replaced with other ingredients such as plasticizers or elastomers. By adjusting the levels of plasticizers and elastomers, this will compensate for any change in texture, taste, and overall quality of the product. (Specification, page 4, lines 25-33, page 5, lines 1-3.)

Lecithin is a complex, naturally occurring mixture of phospholipids that most often is obtained from soybean oil. Phospholipids function as the surface-active portion of lecithin; this portion affords lecithin most of its functional properties. The addition of lecithin to the gum formulation allows for various substances (such as oil and water) in the gum matrix to more easily blend together. (Specification, page 5, lines 16-21.)

It has been found that by eliminating fillers from gum bases and adding high levels of lecithin, that the resultant chewing gum, when chewed, will produce gum cuds having reduced adhesion to environmental surfaces. It is believed that eliminating the fillers from the gum base prevents the fillers from mixing with the active elements of the gum base (e.g., polymers, softeners, and flavors) causing a decrease in gum cud removal times. The addition of lecithin, especially at high levels, is believed to act as a partitioning agent between high molecular weight materials. Due to the absence of filler materials, the polar ends of the lecithin molecules remain free while the non-polar ends of the lecithin molecules remain attached to the high molecular weight materials. This results in a solid, but looser matrix of gum components. This matrix affords improved removability from surfaces characteristic to the gum cud. (Specification, page 5, lines 4-15.)

As noted above, the inclusion of lecithin is an essential feature of the claimed invention. Lecithin therefore is to be added to the chewing gum formulation in an amount ranging from about 3.0% to about 15.0% by weight of the chewing gum formulation. Further, in an embodiment, the chewing gum may include about 5.0% to about 9.0% lecithin in the formulation. In a gum base formulation, lecithin may comprise approximately 20% to about 50% lecithin and in an embodiment, approximately 30% to about 40% lecithin. (Specification, page 5, lines 22-27.)

A variety of different chewing gums can be created pursuant to the present invention, all of which will lack fillers but will include lecithin. (Specification, page 4, lines 25-26.) Such chewing gums can include sugar gums, sugarless gums, bubble gums, coated gums, and novelty gums. Such chewing gums can be formed in the shape of pellets, sticks, tabs, or chunks. A variety of different chewing gum formulations are possible. (Specification, page 5, lines 28-32.)

As disclosed in Appellants' Patent Application, Appellants have produced numerous inventive chewing gum compositions pursuant to the claimed invention. The inventive compositions that include lecithin but not fillers display reduced adhesion characteristics when compared to conventional gum formulations that include fillers and/or not lecithin. (Specification, pages 11-14).

VI. ISSUES

The issues on Appeal are as follows:

1. Would the chewing gum, gum base and methods of producing same as defined by Claims 1-6 and 8-20 have been non-obvious in view of *Cherukuri I*, *Cherukuri II* or *D'Amelia* under 35 U.S.C. § 103?

2. Would the chewing gum as defined by Claim 7 have been obvious at the time of the invention to one of ordinary skill in the art under 35 U.S.C. § 103(a) over *Cherukuri I*, *Cherukuri II* or *D'Amelia* in view of *Klose*?

VII. GROUPING OF THE CLAIMS

Appellants argue for the separate patentability of each of the independent claims separate and apart from each other as set forth in detail below pursuant to the requirements of 37 C.F.R. § 1.192(7), unless otherwise specified.

VIII. ARGUMENT

A. The Claimed Invention -- Independent Claims

On Appeal, there are four independent claims, that is, Claims 1, 8, 14, and 18. Independent Claims 1, 8, 14, and 18 provide as follows:

Independent Claim 1 recites a chewing gum that includes a water insoluble portion not including a filler; a water soluble portion including a flavor; and approximately 3% to about 15% by weight lecithin.

Independent Claim 8 recites a gum base that includes an elastomer; at least 20% by weight lecithin; and no filler.

Independent Claim 14 recites a chewing gum that includes a water soluble portion including a flavor; a water insoluble gum base portion that does not include a filler; and at least 5% by weight lecithin.

Independent Claim 18 recites a method for producing chewing gum wherein a resultant gum cud that is produced has reduced adhesion to environmental surfaces as compared to a gum cud produced by typical chewing gum formulations comprising the steps of using a gum base to produce the chewing gum that does not include a filler and adding at least 3% by weight lecithin to the chewing gum.

B. The Rejections

Claims 1-6 and 8-20 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Cherukuri I*, *Cherukuri II* or *D'Amelia*. The Patent Office essentially asserts that any one of the cited references discloses or suggests the claimed invention.

Claim 7 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cherukuri I*, *Cherukuri II* or *D'Amelia* in view of *Klose*. The Patent Office essentially relies on *Klose* to remedy the deficiencies with respect to any one of the other cited references.

1. The Applicable Law

a. 35 U.S.C. § 103

The Court of Appeals for the Federal Circuit has held that the legal determination of an obviousness rejection under 35 U.S.C. § 103 is:

whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made...The foundation facts for the *prima facie* case of obviousness are: (1) the scope and content of the prior art; (2) the difference between the prior art and the claimed invention; and (3) the level of ordinary skill in the art...Moreover, objective indicia such as commercial success and long felt need are relevant to the determination of obviousness....Thus, each obviousness determination rests on its own facts.

In re Mayne, 41 U.S.P.Q. 2d 1451, 1453 (Fed. Cir. 1997).

In making this determination, the Patent Office has the initial burden of proving a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-84 (Fed. Cir. 1992).

Further, the Federal Circuit has held that it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071 at 1075. (Fed. Cir. 1988).

Moreover, the Federal Circuit has held that "obvious to try" is not the standard under 35 U.S.C. § 103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). "An obvious-to-try situation exists when a general disclosure may pique the scientist curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claim result would be obtained if certain directions were pursued." *In re Eli Lilly and Co.*, 14 U.S.P.Q.2d 1741, 1742 (Fed. Cir. 1990).

"If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent." *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1444 (Fed. Cir. 1992).

2. The Rejection of Claims 1-20 under 35 U.S.C. § 103
Should Be Reversed Because the Patent Office Has Failed to
Overcome its *Prima Facie* Burden

Appellants respectfully submit that the Patent Office has failed to overcome its *prima facie* burden with respect to the rejection of Claims 1-20 under 35 U.S.C. § 103. The Patent Office has improperly relied on *Cherukuri I*, *Cherukuri II* or *D'Amelia*, alone or in combination with *Klose*, to support the obviousness rejections.

a. The Reduced Adhesion Features of the Claimed Invention

Of the pending claims, claims 1, 8, 14 and 18 are the sole independent claims. Claim 1 recites a chewing gum that includes a water insoluble portion not including a filler; a water soluble portion including a flavor; and approximately 3% to about 15% by weight lecithin. Claim 8 recites a gum base that includes an elastomer; at least 20% by weight lecithin; and no filler.

Claim 14 recites a chewing gum that includes a water soluble portion including a flavor; a water insoluble gum base portion that does not include a filler; and at least 5% by weight lecithin. Claim 18 recites a method for producing chewing gum wherein a resultant gum cud that is produced has reduced adhesion to environmental surfaces as compared to a gum cud produced by typical chewing gum formulations. The method includes using a gum base to produce the chewing gum that does not include a filler and adding at least 3% by weight lecithin to the chewing gum.

The present invention provides an "environmentally friendly" chewing gum composition that produces gum cuds having reduced adhesion compared to typical chewing gum compositions. To this end, it has been found that by reducing or eliminating an inert filler from gum base and adding to the base or chewing gum formulation sufficient levels of lecithin, it is possible to produce a chewing gum wherein the resultant gum cud has improved removability from surfaces.

b. The Cited Art is Deficient with respect to the Claimed Reduced Adhesion Features

Appellants believe that the cited art, even if combinable, is deficient with respect to the claimed invention, particularly with respect to the claimed reduced adhesion features. For example, *Cherukuri I* primarily relates to a chewing gum base composition which includes an elastomer, elastomer solvent, polyvinyl acetate, emulsifier, low molecular weight polyethylene, waxes, plasticizers and fillers. See *Cherukuri I*, Abstract. Although in the Run D example of *Cherukuri I* no filler is disclosed, no lecithin is disclosed either. This contrasts the claimed chewing gum that at least includes no filler in combination with a suitable amount of lecithin as claimed to provide reduced adhesion properties as previously discussed.

Further, Appellants believe that the Patent Office cannot rely on the Run D disclosure in *Cherukuri I* in support of the obviousness rejection as Run D does not effectively constitute an "enabling disclosure." As stated in the second heading of MPEP §2121.02, "[a] reference does not contain an "enabling disclosure" if attempts at making the compound or composition were unsuccessful before the date of invention." *In re Wiggins*, 488 F.2d 538 (CCPA 1971). Indeed, the discussion with respect to Run D sets forth the following:

The Run D results showed an increase in plasticizing that was so severe that the gum was extremely tacky and the gum could not be chewed. The gum exhibited disintegration.

See, *Cherukuri I*, column 9, lines 44-47.

Clearly, Run D cannot be considered enabling with respect to the claimed invention that provides a chewing gum that at least includes no filler and a suitable amount of lecithin such that the chewing gum has reduced adhesion properties. Moreover, Appellants believe that one skilled in the art would consider that *Cherukuri I* would effectively teach away from the claimed invention in view of same.

Equally unavailing is the Patent Office's reliance on columns 5 and 6 of *Cherukuri I*. As detailed above, there is no "enabling disclosure" in *Cherukuri I* for a chewing gum composition which has no filler with reduced adhesion properties to the extent that *Cherukuri I* effectively teaches away from same. Further, even accepting the Patent Office's theory that lecithin could be chosen as the emulsifier, this does not address the fact that no working examples are provided

in *Cherukuri I* which include the combination of lecithin along with the complete absence of filler.

In ascertaining the appropriateness of a particular reference as the basis for a rejection under §103, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984). Indeed, the fact that all of the "working" examples include filler necessarily teaches away from the present invention which requires that no filler be present in the chewing gum base. Moreover, in reading the disclosure concerning the example which contained no filler, one skilled in the art would reasonably conclude that such a gum composition simply would not be desirable to make. Thus, nowhere does *Cherukuri I* disclose or suggest a chewing gum composition with reduced adhesion properties that at least includes Appellants' claimed lecithin percentages in combination with the complete absence of filler. Therefore, Appellants believe that *Cherukuri I* is deficient with respect to the claimed invention.

Cherukuri II similarly is deficient with respect to the claimed invention. The primary focus of *Cherukuri II* relates to a bubble gum base composition that contains a combination of two PVA polymeric materials, namely a low molecular weight component and a medium molecular weight component, along with an acetylated monoglyceride having a saponification value above about 400. See, *Cherukuri II*, Abstract. The composition preferably includes fillers in an amount of up to 40%. See, *Cherukuri II*, Col. 2, lines 56-57 and Col. 7, lines 30-39. The inclusion of fillers, not to mention in such a high amount, clearly teaches away from the claimed invention where no filler is a required feature.

Further, Examples I and II which do include lecithin use amounts, namely, 0.060 % and 0.5 %, far below Appellants' claimed percentage of about 3% to about 15% (claim 1), at least 20% (claim 8), at least 5% (claim 14) and at least 3% (claim 18). Moreover, both Examples I and II also include 25.5% and 6% of filler, respectively. Thus, nowhere does *Cherukuri II* provide a chewing gum that does not include a filler and that further includes lecithin, let alone lecithin in an amount as claimed, such that the adhesion properties of the gum can be reduced as required by the claimed invention. Therefore, *Cherukuri II*, like *Cherukuri I*, is distinguishable from the claimed invention.

D'Amelia similarly fails to disclose or suggest the claimed invention. The primary emphasis of *D'Amelia* relates to a single phase formulated homogenous gum base which contains a plasticized elastomer and a plasticized resin without the necessity of ester gum. See, *D'Amelia*, Abstract and Claim 1. Much like the other references relied upon by the Patent Office, the gum base may optionally include fillers in an amount of 0-60% and may optionally include emulsifiers in an amount of 0-10%. See, *D'Amelia*, Col. 5, lines 38-40 and Col. 6, lines 16-20. However, there is no clear teaching or suggestion to provide a chewing gum that at least includes no filler in conjunction with lecithin, let alone lecithin in an amount as claimed, such that reduced adhesion properties can be obtained as required by the claimed invention.

In order for an obviousness rejection to be proper the prior art references must teach or suggest all the claim limitations. See, MPEP 2143. Although the Patent Office states that it would have been "obvious to select lecithin as the emulsifier" (See, Final Office Action at 2), however, this statement fails to address the crucial issue. The use of lecithin and the non-use of a filler are not optional components of the claimed invention as in *D'Amelia*. More specifically, the claimed invention requires that the chewing gum include lecithin, but no filler. Contrary to the Patent Office's assertions there is no clear teaching or suggestion anywhere in *D'Amelia* which relates to such a composition. Thus, *D'Amelia*, like the *Cherukuri* references, is deficient with respect to the claimed invention.

With respect to the rejection of claim 7, the Patent Office further relies on the *Klose* reference. Claim 7 depends from claim 1 and thus as a matter of law incorporates each of the features of claim 1. As previously discussed, *Cherukuri I, II* or *D'Amelia* are deficient with respect to the claimed invention, particularly with respect to a chewing gum that at least includes no filler and that further includes a sufficient amount of lecithin such that the chewing gum has reduced adhesion properties.

Further, the Patent Office cannot rely solely on *Klose* to remedy the deficiencies of the other cited references. Indeed, the Patent Office merely relies on *Klose* for its alleged disclosure regarding a chewing gum that includes a color and an antioxidant. Thus, even if combinable, the cited art is deficient with respect to the claimed invention.

What the Patent Office has done is to apply hindsight reasoning in support of the obviousness rejections. Of course, "the mere fact that the prior art may be modified in the

manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992). Further, the Court of Appeals for the Federal Circuit has held that “[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303,312-4 (Fed. Cir. 1983).

Again, the cited art is deficient with respect to a chewing gum that at least includes no filler and a suitable amount of lecithin such that the adhesion properties of same can be effectively reduced as required by the claimed invention and discussed above. If the claimed invention was so obvious in view of the cited art, why do the cited references merely disclose that lecithin and fillers are optional ingredients; and further why do the cited references fail to recognize the importance that the interplay between lecithin without fillers has on reducing adhesion properties of a gum, particularly with respect to environmental surfaces.

In contrast, Appellants have discovered that the simultaneous exclusion of fillers and inclusion of lecithin result in a gum product that displays reduced adhesion, especially to environmental surfaces. Indeed, Appellants have provided a detailed explanation why a gum with lecithin and without fillers should have reduced adhesion properties as discussed above. Moreover, this is supported with experimental studies that demonstrate the beneficial effects of the claimed invention.

For example, on pages 11-14 of the instant patent application, experimental gum compositions are discussed. Comparative Example 4 is an example of a conventional chewing gum that contains fillers but contains no lecithin. Examples 5-9 are chewing gum compositions made pursuant to an embodiment of the claimed invention. The experimental gum compositions were each subject to an adhesion test. As compared to Comparative Example 4, the Inventive Examples 5-9 displayed approximately 40% to 50% reduced adhesion to environmental surfaces. In view of same, Appellants do not believe that one skilled in the art viewing the cited references, separately or even if combinable, would be inclined to modify same to provide a gum with lecithin, without fillers and with reduced adhesion properties as required by the claimed invention. Therefore, Appellants believe that the Patent Office has failed to establish a *prima*

facie case of obviousness. Even if the Patent Office has met its burden, Appellants believe that they have demonstrated unexpected results rebutting same.

Accordingly, Appellants respectfully request that the rejection of Claims 1-20 under 35 U.S.C. §103 be reversed.

IX. CONCLUSION

Appellants' claimed invention set forth in claims 1-20 is neither taught nor suggested by the cited references, either alone or in combination. The Patent Office has failed to establish a *prima facie* case of obviousness with respect to the rejection of claims 1-20. Accordingly, Appellants respectfully submit that the rejections of the pending claims as being obvious are erroneous in law and in fact and should therefore be reversed by this Board.

Respectfully submitted,

BELL, BOYD & LLOYD LLC


BY _____

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Date: September 29, 2003

APPENDIX

1. A chewing gum comprising:
a water insoluble portion not including a filler;
a water soluble portion including a flavor; and
approximately 3% to about 15% by weight lecithin.

2. The chewing gum of Claim 1 including:
an elastomer comprising approximately 3% to about 50% by weight of the water insoluble portion;

a softener comprising approximately 3% to about 50% by weight of the water insoluble portion; and

an emulsifier comprising approximately 2% to about 20% by weight of the water insoluble portion.

3. The chewing gum of Claim 1 including an elastomer solvent.

4. The chewing gum of Claim 1 including a resin.

5. The chewing gum of Claim 4 wherein the resin is chosen from the group consisting of polyvinylacetate, vinylacetate-vinyllaurate copolymer, ethylenevinylacetate and polyvinyl alcohol.

6. The chewing gum of Claim 4 wherein the resin comprises approximately 5% to about 75% by weight of the insoluble portion.

7. The chewing gum of Claim 1 including:
a color; and
an antioxidant.

8. A gum base comprising:
an elastomer;
at least 20% by weight lecithin; and
no filler.

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9. The gum base of Claim 8 wherein:
the elastomer comprises approximately 3% to about 50% by weight of the gum base.

10. The gum base of Claim 8 including softener that comprises approximately 3% to
10 about 50% by weight of the gum base.

11. The gum base of Claim 8 including an emulsifier that comprises approximately
2% to about 20% by weight of the gum base.

15 12. The gum base of Claim 8 including resin that comprises approximately 5% to
about 75% by weight of the gum base.

13. The gum base of Claim 8 including elastomer solvent that comprises
approximately 3% to about 70% by weight of the gum base.

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14. A chewing gum comprising:
a water soluble portion including a flavor;
a water insoluble gum base portion that does not include a filler; and
at least 5% by weight lecithin.

25

15. The chewing gum of Claim 14 wherein the chewing gum is sugar free.

16. The chewing gum of Claim 14 wherein the water insoluble gum base portion includes:

an elastomer;
a softener;
5 a resin;
an emulsifier; and
an elastomer solvent.

17. The chewing gum of Claim 14 wherein:

10 the elastomer comprises approximately 3% to about 50% by weight of the water insoluble gum base portion;

the softener comprises approximately 3% to about 50% by weight of the water insoluble gum base portion;

15 the emulsifier comprises approximately 2% to about 20% by weight to the water insoluble gum base portion;

the resin comprises approximately 5% to about 75% by weight of the water insoluble gum base portion; and

the elastomer solvent comprises approximately 3% to about 70% by weight of the water insoluble gum base portion.

20 18. A method for producing chewing gum wherein a resultant gum cud that is produced has reduced adhesion to environmental surfaces as compared to a gum cud produced by typical chewing gum formulations comprising the steps of using a gum base to produce the chewing gum that does not include a filler and adding at least 3% by weight lecithin to the
25 chewing gum.

The method of Claim 18 wherein the lecithin is added to the gum base.

30 20. The method of Claim 18 further comprising using a water soluble portion wherein the lecithin is added to the water soluble portion.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,033	08/25/2000	Mansukh M. Patel	112703-017	5292

29156 7590 04/29/2003

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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DATE MAILED: 04/29/2003

Due: 7/29/03

18

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/648,033

Applicant(s)

PATEL ET AL

Examiner

ARTHUR L. CRBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☐ Responsive to communication(s) filed on _____

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

Art Unit: 1761

1. In view of the Board of Appeals decision and remand dated March 31, 2003, prosecution is hereby reopened and the following action rendered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,518,615, cols. 5 and 6, Table III, Run D and claims 1 and 11), Cherukuri et al (4,794,003, cols. 2 and 6-8 and claims 12 and 19) or D' Amelia et al (cols. 3, 5, 6 and 10).

Applicant is referred to paragraph No. 5, Paper No. 5 for a description of each primary reference. It would have been obvious to select lecithin as the emulsifier in each primary reference since lecithin is a viable alternative to each of the other emulsifiers described in each primary reference. Although the maximum amount of lecithin in each primary reference is 10% by weight, which is within the range claimed by applicants in claims 1-7 and 14-20, finding the optimum amount of lecithin to be included in the gum base, as in applicant's claims 8-13, would require nothing more than routine experimentation by one reasonably skilled in this art.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Cherukuri et al patent or D' Amelia et al as applied to claims 1-6 and 8-20 above, and further in view of Klose et al.

Applicant is referred to the reasoning set forth in paragraph No. 7, Paper No. 5.

5. The switch from 35 USC 102 to 35 USC 103 in the rejection of claims 1-6 and 14-20 is not a new ground of rejection (In re Jacobson, 160 USPQ 795 and Ex parte Hill, 169 USPQ 437). Accordingly, this action is properly made FINAL.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers

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for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
April 28, 2003

ARTHUR L. CORBIN
PRIMARY EXAMINER

4-28-03